

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

DANNY SARTAIN,

Cause No. CV 12-80-BU-DLC-CSO

Petitioner,

vs.

ORDER and
FINDINGS AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

LEROY KIRKEGARD,

Respondent.

On November 8, 2012, Petitioner Danny Sartain moved to proceed in forma pauperis with this action for writ of habeas corpus under 28 U.S.C. § 2254. Sartain is a state prisoner proceeding pro se.

After reviewing the motion and supporting account statement, I find Sartain has sufficiently shown he cannot afford to pay all costs that may be associated with this action. The motion to proceed in forma pauperis will be granted.

Sartain also filed motions for appointment of counsel, an evidentiary hearing, and summary judgment. Habeas petitions, however, must be prescreened. Rule 4, Rules Governing § 2254 Cases. During that process, the Court will review Sartain's

submissions and will consider whether counsel should be appointed and whether an evidentiary hearing is required or permitted. After prescreening is completed, an Order and/or Findings and Recommendation will be issued and will prescribe the next step in the litigation. At this time, Sartain's motions are inapposite.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Sartain's motion to proceed in forma pauperis (doc. 2) is GRANTED. The Clerk of Court shall waive payment of the filing fee.
2. Sartain's motions for counsel and for discovery (docs. 3, 4) are DENIED.
3. Sartain's motion for summary judgment (doc. 5) should be DENIED as premature.

**NOTICE OF RIGHT TO OBJECT
TO FINDINGS & RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Sartain may serve and file written objections to this Findings and Recommendation within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. If Sartain files objections, he must itemize each factual finding to which objection is made and must identify the evidence in the record he relies on to contradict that finding; and he must itemize each recommendation to which objection is made and must set forth the authority he relies

on to contradict that recommendation. Failure to assert a relevant fact or argument in objection to this Findings and Recommendation may preclude Sartain from relying on that fact or argument at a later stage of the proceeding. A district judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendation. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Sartain must immediately advise the Court of any change in his address by filing a “Notice of Change of Address” under this case number. Failure to do so may result in dismissal of his case without actual notice to him.

DATED this 13th day of December, 2012.

/s/ Carolyn S. Ostby
United States Magistrate Judge